



funeral notices and obituaries, ascertains the names of the pall bearers and communicates with them, checks the availability of the officiating minister and the church and makes arrangements for the burial. He assists in conducting the funeral service and in moving the coffin to and from the hearse. If the body is to be shipped, he makes the arrangements.³

In an effort to promote respect for their calling, men within the occupation of funeral directing have fostered legislation demanding the highest standards of conduct for their members. However laudable may be the aim of winning recognition and respect, the result has been the creation of a patchwork system of revocation clauses calling for a standard of conduct higher than needed in many instances. (see listing of revocation sections in the Statutes of 50 States wherein "solicitation" is a ground for revocation or suspension of the funeral director's license).⁴

* The present revocation sections are unduly repressive in two ways. First, they do not provide the

³ Gholson v. Engle, 9 Ill2d 454 (1956).

⁴ See Statutes of 50 States, infra.

practitioner with any precise, clear cut standard to which
they can conform, second, they do not conform with the basic
justification for the regulation of funeral directing --
public protection.

License revocation is an exceptionally severe
penalty. Despite the prevailing attitude that revocation
proceedings are not penal in nature, it must be conceded as
a practical matter that loss of a license is one of the
harshest penalties that can be imposed on a practitioner.
It means to secure a livelihood should not be denied where
the denial is calculated to effect an aim of any less
importance than protection of the public. Further, license
revocation should not be tolerated unless the crime, act or
pattern of conduct of the licensee adversely reflects upon
his ability to perform properly the duties of his profession.
In this connection, practically all of the 50 states have
enacted legislation which provides that the solicitation of a
burial "after death or while death is impending", by a funeral
director constitutes "unprofessional conduct" for which action

the license of the funeral director may be revoked. A careful reading of the statutes, however, will reveal that the apparent legislative intent behind listing "solicitation" as a grounds for revocation is to protect the grieving family from the hands of the zealous funeral director at a time when the family may be exploited. In support of this contention, a California court has construed their statute, containing identical language to the above, thusly:⁵

The solicitation section is not arbitrary or discriminatory and bears relation to the public welfare. It is aimed at preventing the commercialization of death at a time when those concerned are emotionally upset and easily imposed upon. The legislature acted well within its powers in providing for the protection of the public from the annoyance of direct solicitation of the bodies of members of the family while death is impending or immediately thereafter. It is a matter of common knowledge that during that period the people involved are distraught and emotionally distressed. The obvious purpose of this section is to prevent funeral directors from taking undue advantage of their patrons when they are in no condition to withstand pressure. It is to be noted that the prohibition as to solicitation is not absolute. Solicitation by general advertisements is expressly permitted and solicitation while death is not impending by implication, also is permitted." (Emphasis added)

Dunnay v. State Board of Funeral Directors, 13 Cal 2d 75 (1939).

In accordance with the Drummey case, funeral directors and those who are not licensed to practice funeral directing have attempted to institute programs whereby persons are solicited to arrange for their own funeral on a pre-need basis. A pre-arranged funeral is simply a situation wherein a person agrees with a funeral director for the latter to furnish certain merchandise and services in connection with his own funeral. A pre-arranged funeral is totally advantageous to the purchaser in that he is provided an opportunity to discuss rationally both the mode and cost of his funeral.

Despite the advantages of making the pre-arranged funeral available to a large segment of our population by soliciting the public for such arrangements, the funeral directors and those acting on their behalf have been reluctant to engage in such solicitation for fear of reprisals in the form of license revocation. *

Inasmuch as most states have not recognized the distinction between the evils behind solicitation of dead bodies and the advantages behind soliciting on a pre-need basis, the profession of funeral directing has been left to operate on an ad hoc basis with the hope of avoiding reprisals for their solicitation.

The real policy behind prohibiting funeral directors from soliciting patrons is best expressed in Mashburn v. Board of Funeral Directors and Embalmers.⁶

Respecting the solicitation of funeral business . . . we interpret the legislative prohibition to mean that the licensee funeral director shall not, by act of work or deed, entice, importune, allure, excite or ask for the funeral or embalming business respecting the dead body of a deceased person. The reason for this prohibition is clearly to protect those in the throes of deep grief at the loss of a loved one from being left unwittingly into commitments which they would not have entered into except for their grief and their consequent inability to follow an ordinary business transaction.
(Emphasis added)

⁶ Mashburn v. Board of Funeral Directors and Embalmers,
132 Cal App2d 126 (1955) at page 136.

There is no question that the states have a legitimate interest in preventing embalmers and undertakers from taking unfair advantage of their patrons at a time when such patrons are in no condition to withstand pressure. The problem to be discussed herein is whether the prohibition respecting the solicitation of dead human bodies can legitimately be extended to the solicitation of a patron to pre-arrange his own funeral.

THE "AT NEED" SITUATION

From time to time stories appear which evidence the success of the salesmanship of certain funeral directors. Perhaps the most publicized case of funeral directors taking advantage of their superior bargaining position occurred in connection with the 1947 coal mine disaster in Centralia, Illinois, in which 111 miners died. An investigation made by the United States Coal Mine Administration revealed that as much as \$1,178.50 was charged for a funeral; that the average cost was \$732.78; and that charges for identical caskets and services varied by several hundred dollars, in accordance with the magnitude of union welfare death benefits and state compensation.⁷ It was this spectre of funeral directors flocking to the 1947 coal mine disaster and other such disasters that prompted state legislatures to enact statutes providing for the revocation or suspension of the license of any funeral director soliciting a dead body.

Although dishonesty or abuse may not be widespread, economic factors force undertakers to do everything possible

⁷"New York Times", August 3, 1947.

to maximize the proceeds of each funeral handled. Both the funeral industry and its critics point out that the market for funerals is limited because there are only a certain number of deaths per year and the death rate is nearly static or has declined.⁸ There are a great many undertakers competing for business in this inelastic market, and the average number of funerals handled by most funeral directors is suprisingly low. Of the 790 firms that participated in the National Funeral Directors Association's survey for 1960; 61% conducted fewer than 100 funerals; 27% conducted 100-199; 7% conducted 200-299; and only 5% conducted more than 300 funerals.⁹ Since the funeral director's large operating cost and overhead must be met from the proceeds of these few funerals, it is easy to understand why many funeral directors think it imperative to sell the most expensive funeral that traffic will bear.

It is in this market situation, then, that the person who must arrange a funeral finds himself. Most often

Krieger, Successful Funeral Service Management, page 26 (1951).

National Funeral Directors Association, "Funeral Service Facts and Figures", page 10 (1961).

he is a relative or friend of the deceased and is too distressed to resist high pressure selling. Almost certainly, he will be disinclined to shop around for better prices or services and there is some doubt whether his position would be much improved even if he did. It is therefore quite possible that he may be influenced to choose expensive merchandise and services that he or the estate cannot afford and that, in the absence of emotional strain, he would not select. In short, one who must arrange a funeral is generally on the weak side of a most unequal bargaining situation. The result may be, from his point of view, a very bad bargain. For the same reasons he did not shop around and try to make a better bargain, it is unlikely that he will attempt to withdraw from the bargain once made. And should he later regret the expensive arrangement to which he has committed himself or the estate, the mere fact of high pressure salesmanship will not justify avoidance. If he could show that his consent to the agreement was induced by false representations, the contract obligation might be avoided. Though no decision has been found in which a funeral contract was attacked on this ground.¹⁰

¹⁰

See 15 Stanford Law Review, 415 (1962).

Traditionally, when the funeral director obtains possession of the remains of the deceased immediately subsequent to his death, the customer has already given up the greatest bargaining asset that he possessed in any transaction, namely, the privilege of declining all offers and seeking another seller. When he turned over the body to the funeral director he practically limited himself to that one practitioner. Scarcely, if ever, is a body taken by the family from one establishment to another because of dissatisfaction or disagreement over the terms. Moving the body to the funeral parlor in the first place is done by the undertaker as a matter of course. The procedure is accepted by the family because of, first, its reliance on him for the proper steps to be taken, and, second, because of the almost universal desire to have the body out of the living quarters.

In order to improve the bargaining situation of those who must deal with funeral directors, the only realistic solution is pre-arrangement -- generally in the form of arrangements with undertakers who agree to make available

a simple, moderately priced funeral. By making arrangements in advance, it is possible to insure that decisions are rational, as they frequently are not during periods of grief where there is a strong desire to escape reality and to ignore practical matters. Even when grief is not overwhelming, persons respond to sales pressures applied by members of the trade with greater readiness than in other circumstances.

Death strikes its most awful blow to the hearts and minds of those whose association has been most intimate and continuous with the person whose life has ended. All the defensive attitudes that may have been built up against its coming, all the rationalizations in which anyone may have indulged about its inevitability -- these are paper armor when the sad hour comes. Philosophy and faith may help to meet its crisis, they are, however, but ways of coping with it; the happening itself is tragedy. Death may be long in coming because of prolonged sickness or lengthened weaknesses of old age, until the final going is shorn of its most tragic features.

It is this procrastination of arrangements for one's own funeral that have allowed funeral directors the bargaining advantage when the time finally arrives. It is conceded that the state has the legitimate authority to protect the public from any unscrupulous funeral director at the time of need. Thus, statutes which impose sanctions for the improper securing or solicitation of business are definitely in the public interest.¹¹

The following is clearly the type of solicitation for which states have listed as cause for revocation:¹²

Turning to the evidence offered to support Count VI, there can be no question that said evidence was sufficient to show that Earle Wright, the manager for the plaintiff (funeral director), solicited for preparation the burial of the human dead body of M.E. Kemnitzer. Said Earle Wright heard of an accident and rushed to the scene, arriving there before the deputy coroner arrived. He falsely stated to the deputy coroner that he had a written order from a member of the family for the delivery to the plaintiff of the remains of said deceased.

¹¹ Louisiana Undertaking Company v. Louisiana State Board of Embalmers, 58 So2d 303 (La. 1953).

¹² Daggett v. Board of Funeral Directors, 44 Cal App2d 742 (1941).

When asked to produce it, he stated that it was at plaintiff's office. Wright then returned and aroused an employee from his sleep; told him that the deputy coroner was bringing the body to plaintiff's establishment; Wright told him that they might not be able to hold the body but to start embalming as soon as possible and at least the charge for embalming could be collected. Wright then rushed to the apartment house where the widow of the deceased resided. He was well acquainted with the operator of said apartment and, with her assistance, he met with the widow of the deceased and obtained from her an order for the coroner to turn the remains over to plaintiff. He then went to plaintiff's establishment where the deputy coroner was still waiting, delivered the order to him and said deputy coroner left the remains at plaintiff's establishment.

The court noted that this, in fact, was the type of solicitation that the California statute was designed to prevent.

To further illustrate the necessity and justification for revocation of licenses of funeral directors who engage in "legal ambulance chasing", I cite the following:¹³

¹³ Harmer, The High Cost of Dying, page 170 (1963).

In 1961, a report of an investigation of activities in the Los Angeles County Coroner's Office, which handles between 10,000 and 11,000 cases a year, revealed how assiduously undertakers have been working outside the law to obtain bodies. According to County Coroner Theodore J. Curphey, the investigation -- which later attracted the FBI's interest -- began in the summer of 1959, when they noticed that several Los Angeles funeral directors seemed to be picking up from the central morgue more coroner's cases than would normally be their share, when considering their total business handled in previous years. Since most of the cases checked revealed that there were no local relatives, it became apparent that some of the employees were turning over confidential information to undertakers. The undertakers then got in touch with distant relatives to solicit business . . . it was made more reprehensible by the informed undertaker's announcement to the distant relatives that he had the body, when it was actually still in possession of the coroner's office and could not be released without consent of the relatives. Needless to say, the mortician readily received authorization to conduct the funeral, and armed with that consent he went to the morgue and obtained the body.

Practices such as this have justifiably given rise to state legislation imposing sanctions for this type of action. However, the meaning of the "solicitation" cannot legitimately be extended to apply in those situations wherein a funeral director or his agents solicit a person to arrange a funeral on a pre-need basis. The basic difference

between the situations is two-fold: in the first instance the funeral director is depriving the survivors of their right to choose who shall provide for the disposition of the remains of the deceased. Pre-arrangement is a situation whereby a person is solicited to arrange his own funeral at a rational cost and under less strenuous circumstances. Thus, in the former case the solicitation can act to alter or deprive the choice of the survivor as to the care and disposition of the remains and cost of the funeral, while in the latter case the solicitation provides a person with an opportunity to make those very choices.

Important

PRE-ARRANGEMENT OF FUNERAL SERVICE

Too often people complain bitterly that they would have decided on more modest funerals for their loved ones if they had been given an unfettered choice. Many who have had to lower their standard of living because of a lavish funeral have discovered that their decisions have not been based on a rational assessment of the lasting value of funerals to the family. There is a very serious question that the lasting returns from the expensive funerals are commensurate with the outlay in any but a limited number of instances. The wished for result of large expenditures traditionally is the elevation of the status of the family in the community of acquaintances. But rarely is the status of a family raised in the opinion of neighbors and friends by ostentation at a funeral. Almost invariably it is recognized as a conspicuous display, whether it is approved or not. In order to avoid the ostentatious and conspicuous display at funerals and to further avoid the "grief syndrome" that accompanies these displays, an individual can arrange for his own funeral at a stated price on a pre-need basis.

Pre-arranged funerals, whereby a person while still
live specifies the mode and cost of his final disposition,
re, for obvious reasons, much less expensive than those
arranged by grieving and vulnerable survivors. The National
elected Morticians, an organization consisting of 800 members,
as determined that the average adult figure for a funeral
n 1970 was \$925.00. Surely, by pre-arranging a simple,
ow cost funeral for himself, in advance of death, this
figure can be largely reduced.

*1973 - National average overhead
cost to funeral home per adult
not including casket - funeral \$438. quoted in Progressive Mortuary
Method. November
Dec. 1974*

A pre-need burial contract has been defined as a
contract, which has for a purpose the furnishing or per-
formance of funeral services, or the furnishing or delivery
of personal property, merchandise or services of any nature
in connection with the final disposition of a dead human body,
or future use at a time determinable by the death of the
person whose body is to be disposed of. Traditionally, this
definition does not include the furnishing of a cemetery lot
or mausoleum.¹⁴

*1974 figures will
not be available
until May*

In recognition of the states legitimate
interest in promoting the pre-arrangement of funeral services,

¹⁴ Kentucky Revised Statutes, Section 316.103.

35 states have enacted legislation requiring that funds received pursuant to the sale of a pre-arranged funeral service be deposited in trust.¹⁵

Typical of these statutes is the Illinois Funeral or Burial Trust Fund Act.¹⁶ Illinois Revised Statutes Chapter 111-1/2, Section 73.101 provides:

Any payment of money made to any person, partnership, association or corporation upon any agreement or contract, or any series or combination of agreements or contracts, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of any personal property, merchandise or services of any nature in connection with the final disposition of a dead human body, for future use at a time determinable by death of the person or persons whose body or bodies are to be so disposed of, shall be held to be trust funds and the person, partnership, association or corporation receiving said payments is hereby declared to be a trustee thereof.

This statute also provides that all such trust funds must be deposited in the name of the trustee within 30 days after receipt thereof with either a bank or a trust company.¹⁷ In this connection, no person, firm, partnership,

¹⁵ See Note 3, supra.

¹⁶ Illinois Revised Statutes, Chapter 111-1/2 §73.101 et seq.

¹⁷ Illinois Revised Statutes, Chapter 111-1/2 §73.102

association or corporation may act as a trustee without first securing from the Auditor of Public Accounts a license to so act. Any license issued pursuant to an application is valid only at the address stated in the application for such applicant or at such new address as may be approved by the auditor. In addition, the applicant must submit a detailed statement of his assets and liabilities and a fidelity bond in such amount as the Auditor may require.¹⁸ The amount or amounts deposited, in trust, with interest thereon, if any, cannot be withdrawn until the death of the person or persons for whose funeral or burial such funds were paid, unless they have already been withdrawn and repaid to the person who originally paid the money under or in connection with said agreement.¹⁹ It should be noted that it is unlawful for any agreement or agreements to provide for forfeiture and retention of payments upon said agreement or agreements as and for liquidated damages for default therein in excess of 25% of the payments made or \$35.00, whichever sum is the larger.²⁰ The only reimbursement that the trustee and

¹⁸ Illinois Revised Statutes, Chapter 111-1/2, §73.103

¹⁹ Illinois Revised Statutes, Chapter 111-1/2, §73.104

²⁰ Illinois Revised Statutes, Chapter 111-1/2, §73.106

trustee's depository may receive from such funds that are deposited pursuant to such agreements are the reasonable expenses and the custody and administration of such funds and the usual and reasonable compensation for the services as such trustee and trustee's depository, provided that the combined expenses and compensation shall not exceed 5% of the principal fund and 5% of the earnings of the fund so deposited under each of the agreements or series of agreements.²¹

The Illinois Burial or Funeral Trust Fund Act has been upheld by the Supreme Court of Illinois as a legitimate exercise of the police power of the state.²² In the Smith case, the court stated:

"There can be no doubt that the act relates to a proper subject for the exercise of the police power. The public has a vital interest in the proper disposition of the bodies of its deceased members. Persons engaged in this business have been subjected to rigorous regulations specifying the

²¹ Illinois Revised Statutes, Chapter 111-1/2, §73.105

²² Memorial Gardens v. Smith, 16 Ill.2d 116 (1959)

place and manner in which their activities may be conducted in prescribing such activities without license or permit. This has been done not only out of proper respect for the dead, but in the interest of public health."

Other states are in accord with Illinois that statutes requiring that funds received pursuant to a sale of a pre-arranged funeral service be deposited in trust are a valid exercise of the state's police power.²³

In the Smith case, the court further stated at

page 124:

There is nothing unique in requiring one who contracts for performance in futuro to give security for that performance

* * *

The contracts here involved are analagous to a form or insurance. By payments made during life, the purchasers seek to insure their burial. The net effect is the same as though a life insurance contract were purchased to provide a sufficient sum payable at death to accomplish that result.

like insurance

* * *

Practically, plaintiffs (sellers) will no longer be able to collect prospective profits in advance without furnishing an adequate guarantee for performance.

²³
Reserve Valut Company v. Jones, 234 Ark. 10, 11 (1962); Faulkner v. Memorial Gardens Association, 293 SW 2d 934 (Tex. 1967); Messerli v. Monarch Memorial Gardens, 88 Idaho 88 (1964); State ex rel Landertohn v. Anderson,

Accordingly, any one who sells a pre-arranged funeral service or merchandise in connection therewith, subject to the provisions of Chapter 111-1/2, §73.101, is subject to the Illinois Burial Funeral Trust Fund Act if he elects to collect funds pursuant thereto in advance of actual need. The state has a vital interest in securing that result and, insofar as the rights of sellers are effected, any considerations must yield to the paramount public welfare.²⁴

The interest that the various states have taken in promoting the pre-arrangement of funeral services is evidenced in the following section declaring the legislative intent of Florida:²⁵

It is the legislative intent that the provisions of this chapter shall be construed as a limitation upon the manner in which a licensed funeral director holding a license to operate a funeral establishment . . . is permitted to accept funds in pre-payment of funeral services to be performed in the future to the end that at all times members of the public may have an opportunity to arrange and pay for funerals for themselves and their families in advance of

Memorial Gardens v. Smith, supra

Florida Statutes, Section 639.19

need while at the same time providing all possible safeguards whereunder such pre-paid funds cannot be dissipated, whether intentionally or not so as to be available for the payment of funeral services arranged for. Further, it is the legislative intent that no person may offer, sell or negotiate for sale of a pre-need funeral service contract through anyone who is not licensed to make funeral arrangements or plan details of funeral services in accordance with the provisions of Chapter 470, Florida Statutes; as well as the provisions of this chapter . . ."

Accordingly, in connection with the sale of the pre-arranged funeral, the singular protection to be afforded the public is the guarantee that funds deposited pursuant to such contract will be available at the time of need. This is the one and only legitimate interest that a state has in regulating the selling of the pre-need service. In order to make the advantages of a pre-arranged funeral available to the public at large, it is likewise in the interest of the state to allow the profession to solicit the public to arrange for their funeral on a pre-need basis.

As we have seen, the abuse that the states have sought to remedy by enumerating solicitation as a ground for revocation or suspension of a funeral director's license is

based on the undue advantage that a funeral director has on those bereaved at the time of death. However, any such extension of the meaning of "solicitation" to include the pre-need situation cannot be justified as a legitimate exercise of the police power of the state as it neither bears a relation to the standards or ethics of the profession of funeral directing nor a substantial relation to the welfare of the public.

The very definition of "solicitation" is further evidence that its usual and customary meaning does not connote an application to the pre-need situation. Black's Law Dictionary defines "solicitation" as "an urgent request enticing" and adds that it is often used with phrases as "solicitation to bribery."²⁶

Furthermore, the language used in many of the statutes enumerating the employment of "cappers" or "steerers" by funeral directors as a ground for revocation admittedly has no application to the pre-need situation.²⁷

²⁶ 4th Edition, page 1564

²⁷ Colar Memorial Park v. Personnel Associates, Inc., 178 NW 2d 343 (Iowa 1970)

Black's Law Dictionary, Revised 4th Edition defines "capper" as a "decoy or lure for purpose of swindling" and "steerer" as "one who gains the confidence of the person intended to be fleeced and who may be said to steer or lead a victim to the place where the latter is to be robbed or swindled." While this definition may apply to the zealous funeral director employing persons in hospitals or institutions to channel business to said funeral director, it obviously does not apply to the pre-need situation.

As noted above, 35 of the 50 states of the union have seen fit to adequately protect the rights of the public by enacting statutes whereby funds received pursuant to the sale of a pre-arranged funeral service are deposited in trust to insure guarantee of the funds at the time of need. Any further prohibition on the rights of a funeral director or his agents to solicit said funeral pre-arrangements is clearly outside the scope of the police power. There is nothing to indicate any danger to the public health in permitting a person, whether a licensed funeral director or unlicensed, to solicit the public to pre-arrange their own funeral. The care of dead human bodies and their

disposition by burial or otherwise is admittedly so closely related to the health and general welfare of a community that the business of caring for and disposing of such bodies is to be regulated by license and special regulations under the general police power of the state.

The danger that may arise from the body of a person who has died from infectious, contagious and communicable disease or otherwise is to some extent obviated by the sanitary regulations of local Board of Health; but regulations relating to the transportation of dead bodies, permits for burials in locality where the person has died, and a compilation of vital statistics are quite inadequate to protect the health, and general welfare of the community unless the person who comes into immediate contact with the dead body, and upon whose care and skill the public are principally dependent in preventing the spread of infection or contagion and protecting the health, good order and general welfare of a community, is selected with special reference to his skill, knowledge, and experience. The opportunity which undertakers frequently have to aid in covering up or uncovering the

evidences of crime also constitutes a reason why they should be selected with reference to their character and integrity.²⁸

A statute passed pursuant to this police power, however, must be reasonable. Its real purpose must be to protect the public health, morals, or general welfare. A statute or ordinance may not under the guise of the police power, impose arbitrary or unreasonable restrictions upon the use of private property or the pursuit of useful activities.²⁹ In order to be valid, the statute must bear some real or substantial relation to the public health, safety, morals or general welfare of the area affected.³⁰

*Good
purpose -
statutory
regulating
pub. health
Not restaurant
trade*

There is no question that a pre-arranged funeral by which a person while still alive specifies the mode and cost of his final disposition is much less expensive than those arranged by sorrowing survivors. However, it seems that some funeral directors themselves are intent in

²⁸ See People v. Ringe, 197 N.Y. 143 (1910)

²⁹ Carter v. City of Bluefield, 132 W. Va. 331 (1949); Lawton v. Steele, 152 U.S. 133 (1928); Anderson v. Jester, 206 Iowa 452 (1935); Merrill v. City of Wheaton, 356 Ill. 457 (1935).

³⁰ Forbes v. Hubbard, 343 Ill. 166 (1932); People v. Weiner, 271 Ill. 74 (1913).

perpetuating the expense and burden to the family of arranging funerals on an at-need basis only. Howard C. Raether took note of this fact at a National Funeral Directors Association Convention some years back. In discussing an analysis of funeral sales, he said:

"If it were possible to tabulate all the pre-arranged funeral services on record, how do you suppose the average of all of them would compare with the average adult figure shown here? (Average adult figure means average price on adult's funeral). Are you ready, willing and able to become part of a program that is going to lower the quality of the average funeral service selected to the point that you will find it difficult if not impossible to stay in business rendering the service you now give? He added, it is good for those who survive to have the right and duty to make the funeral arrangements. Making such arrangements, having such responsibilities, is essential. It is part of the grief syndrome. Part of the therapy of mourning.

It is the positive hook upon which the hat of the funeral service is hung. Why should we tear it down by saying that funerals for the deceased, therefore he or she should make the arrangements? . . . If funeral directors insist on soliciting pre-need funerals, they are, in fact, pre-arranging the funeral of their own profession." 31

Mitford, The American Way of Death, p. 91 (1963).

In connection with the above statement, a study made for the National Funeral Directors Association, a large number of people were asked about their need as they saw it when they went to a mortician immediately after a death had occurred. 99% of those interviewed responded that they were "at a loss as to what steps to take".³² This is the key to the problem of the undertakers advantage over his clients. It is not a high degree of skill on his part, nor is it a lack of competence on the part of the members of the bereaved family, it is merely that they, through the failure of common knowledge and customer experience, do not know what to do.

The public has finally become aware that there is a reasonable alternative to the expensive funeral in pre-need planning. In response to their own tragic experiences and public comment various groups have been formed to bring modesty and simplicity back to the funeral and funeral service.³³

³² National Funeral Directors Association, "Analysis of Attitudes Toward Funeral Directors" 1948, as reported in Bowman, The American Funeral p. 41, 1959.

³³ Ruth Harmer in her book The High Cost of Dying, 1963 stated: "Most persons, however frugally they may have lived, are dying beyond their means."

The ideal of obtaining lower prices through pre-need planning has been adopted by large numbers of consumer groups throughout the country. Typical of the cooperative societies that have arisen, mainly in the Northwest Central area of the country, is that of the Cleveland Memorial Society which was established in 1948. Plans have been worked out by societies such as this to enable members of the society and their families to obtain simple services at a modest cost from funeral directors in the area.

The Cleveland plan, based on that of the Minnesota Cooperative Plan, has been widely followed. One member of the family joins the society and pays the family membership fee of \$10.00. There are no annual dues. The members and each person in the family fill out cards indicating which funeral director they prefer, whether memorial services are desired, and the type of funeral service they wish. The Type I Service provides that a funeral establishment will transport the body without embalming, to a crematory for cremation. Total cost is not to exceed \$200.00.³⁴ The

³⁴ Based on 1963 figures

Type II service includes transportation to a funeral home, embalming the body, if necessary, placing it in a modest coffin selected by the funeral director and private burial before the memorial service. The cost of that is not to exceed \$300.00. The cards are then filed with the funeral director, ready for use when needed. No negotiation is required about price, and payment is made when the services are rendered.³⁵ One member of a Bay area cooperative group in Berkeley, California reported in 1963 that eight months before he joined the cooperative association, he arranged for the burial of his mother through a mortuary. A few months after joining, he had to arrange for the burial of his father. Services for the former, he said, were inferior to the services he received through the association, and the cost had been \$800.00 in contrast to the \$150.00 cost for his father's funeral.³⁶

What legitimate interest could any state possibly have in threatening to revoke the license of a funeral

³⁵ The High Cost of Dying, Harmer, page 192-193 (1963).

³⁶ Ibid, page 27.

director for soliciting contracts which reduce the cost of burial and maintain equality in the negotiation process? What legitimate interest does the state have in revoking the license of a funeral director employing people to solicit the public to arrange for their own funerals on a pre-need basis? There is seemingly no legitimate ground by which revocation may be justified in either of these instances. In the first place, by refusing to allow funeral directors the opportunity to offer pre-need contracts, the state is depriving a large segment of the population of one realistic alternative to the "at need" bonanza now being enjoyed by some funeral directors.

The very vagueness of the revocation section of the statutes of the various states has prevented funeral directors or those acting on their behalf from engaging in the solicitation of the pre-need service. A statute which includes "unprofessional conduct" as a ground for revocation and includes in the definition of "unprofessional conduct" the solicitation of funeral business by a licensee "whether such solicitation occurs before or after death" must be stricken as an unreasonable limitation on the funeral director's

right to maintain his business. It is common knowledge that the "before death" or "while death is impending" or "while death is imminent" language contained in these revocation sections refers to that period immediately prior to the demise of a person. By no stretch of the imagination can the term "before death" be extended to include that time when a person is at the peak of his health and is being solicited by a funeral director for a rational discussion as to the final care and disposition of his body. Various states have decided that those unlicensed to practice funeral directing or embalming may solicit pre-need funeral arrangements. There is no reason why a funeral director, who is the most qualified to discuss such plans with the prospective purchaser should not also be so allowed. 37

37 Utah Funeral Directors and Embalmers Association v. Memorial Gardens of the Valley, Inc., 17 Utah 2d 227 (1965); Boydston v. State of Oklahoma, 277 Pacific 2d 138 (Oklahoma, 1954)

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JUNEAU ALASKA

Alaska State Legislature House

This is to inform you that on February 6, 1976 the House and Senate Commerce Committees will be meeting in joint session to consider House Bills 264, 271, and 509, dealing with the practice of mortuary science.

As this legislation is considered a fundamental reorganization of the regulation of mortuary science within Alaska, we are endeavoring to obtain broad comment on the possible effects of the proposed law.

If you cannot present oral testimony at the hearing, the committees will accept written comments for their consideration.

The exact time and place of the hearing will be announced on Monday, February 2, 1976.

Sincerely,

Representative Bob Bradley, Chairman
House Commerce Committee

Senator Ed Willis, Chairman
Senate Commerce Sub-Committee
on Mortuary Science

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AGENDA

JOINT COMMERCE COMMITTEE'S
HEARING ON MORTUARY SCIENCE
FEBRUARY 6, 1976

- 8:00 a.m. - Introduction and opening by Representative Bob Bradley
- 8:10 a.m. - Summary of pending legislation by Bill Berrier
- 8:30 a.m. - Testimony from the public in the following order:
1. Individuals from out-of-town, as called by the Chair
 2. All remaining individuals, as called by the Chair

(All questions of persons giving testimony will come from the Joint Committees.
Any questions from the floor will be in writing and will be submitted to the Joint Committee Chairman for response)

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH V, STATE CAPITOL
JUNEAU, ALASKA 99811
465-3800

January 16, 1976

Senator Genie Chance
Capital Building
Pouch V
Juneau, AK 99801

Re: Final Report of the Interim Committee on Mortuary
Science

Dear Senator Chance:

The assignment of the Interim Committee on Mortuary Science was to refine the occupational licensing bill (HB 509) and after consideration if the need for an occupational licensing statute appeared, to prepare a committee substitute. The committee met on September 27, December 2, and December 19. Prior to these meetings a suggested revision was prepared and distributed to all the persons currently licensed to practice embalming in this state and to other interested groups. Notices of the workshop meetings were sent to each of these groups. There was substantial attendance from the profession at each of the first two meetings.

As a result of these, a proposed committee substitute for HB 509 has been prepared and a copy of the bill is attached.

Essentially the bill adopts a dual licensing system; that is, licenses are issued separately for the practice of funeral directing and for the practice of embalming. The administration of the occupational licensing was put in the Department of Commerce. The committee's feelings were that an occupational licensing board would not be a good solution and that the Department of Commerce was a logical alternative.

The proposed substitute also sets substantial educational qualifications as a prerequisite to licensing. Under existing law, no qualifications exist. For this reason a "grandfather" provision was inserted which allows persons who are currently licensed as an embalmer to obtain a license as an embalmer under the new act and a person who has actively practiced as a funeral director to obtain a license as a funeral director under the new act without requiring that the newly imposed qualifications be met.

A substantial area covered in the act was a regulation of pre-need sales. The primary thing this regulation does is require that funds received from pre-need sales be deposited in an account in the name of the purchaser and that both the principal and interest in this account remain the property of the purchaser until time of need.

Since pre-need sales are made by other than professionals, and since an enforcement mechanism is essential, this section was made part of the consumer protection statute.

In addition, the bill contains a disclosure of cost section which requires that in broad categories the cost of the services be disclosed to the purchaser. The bill was prepared as a proposed committee substitute for Commerce Committee since the bill was currently lodged in Commerce Committee. The committee strongly recommends that both House and Senate Commerce Committees, preferably jointly, hold other hearings on this bill. During the hearing the committee indicated to the interested parties that if such a hearing were held, notice would be given to these parties.

Very truly yours,

Edward C. Willis
Chairman

ECW:bh

Attachment

**SUCCESSFUL
FUNERAL
SERVICE
PRACTICE**

Edited by HOWARD C. RAETHER
Executive Secretary
National Funeral Directors Association

PRENTICE-HALL, INC.

Englewood Cliffs, N. J.



ABOUT THE EDITOR

Howard C. Raether holds a Ph.B. and J.D. from Marquette University in Milwaukee, Wisconsin. He has been involved in funeral service for thirty years and Executive Secretary of the National Funeral Directors Association since 1948. He was consultant to the United States Government Department of Transportation, National Highway Safety Bureau, and is on a committee serving the Department of Health, Education and Welfare. He was given the highest honor the U.S. Army makes to a civilian—the Distinguished Civilian Service Award. He also is a member of the National Council on Tissue Transplantation and Utilization. He is editor of the NFDA monthly journal, *The Director*, and creator of the *Reference Manual* for funeral directors. In addition his recent writings include, as co-author, *A Compendium of Basic Information on Funeral Establishments and Funeral Establishment Employees and The Fair Labor Standards Act, as Amended* (1968); *Organ and Tissue Transplantation and Body Donation* (1970); and *Personnel Guidance Manual for Funeral Service Practice* (1970).

THE PREARRANGING AND PREFINANCING OF FUNERALS

*Thomas H. Clark
and
Howard C. Raether*

A Brief Background

In the chapter "The Law and a Funeral Service Practice" reference is made to changes in the law to permit an individual during his lifetime to take steps to get the kind of funeral he desires and to determine the method and place of final disposition of his body.

There have been developments toward this new concept for many years, but it has been only since the end of World War II that a significant impact of the move was felt. It was not until 1952 that the National Funeral Directors Association felt the situation warranted a policy statement which concluded with the recommendation which has led to laws controlling and regulating prefinanced funeral contracts being enacted in a large majority of the states.

The Sociology of Life and Death

The funerals for most people are selected at the time of death. Unless one knows when, where and under what circumstances he is going to die, it is difficult for him to prearrange his own funeral, either alone or with a member of his family, and feel that it will be as planned.

There are few people who are sure things won't change sufficiently to upset prearranged plans. And in cases when they are changed and are different, problems are often created instead of being solved.

A national study showed that in 1967 less than 1% of all funerals conducted, except in the Pacific and Mountain regions, were prearranged. It also revealed that from 25% to 33% (depending on the region) of the funerals conducted in 1967 that were prearranged were changed by the survivors. However, about 50% of funeral directors said at that time that prearrangements were on the increase.

Why?

There are those who feel, as is pointed out elsewhere herein, that our society is changing from a family culture to a generation culture. Families are being separated by age, by distance, by knowledge and by philosophy.

Sometimes an elder member, especially if living alone, wants to make sure he or she gets the kind of funeral he desires. Often a surviving spouse will make arrangements for the same kind of funeral that was just conducted for the husband or wife.

Sometimes differences in a family are such that segments thereof feel they have to protect themselves against each other as to funeral arrangements and costs.

Sometimes cost is the primary reason for the prearrangement and prefinancing. There are those who want a moderate to expensive service and who want to be sure they get it. Often prearranging is done in an attempt to keep costs down, to indicate to the family or other survivors that they should not go "overboard" in the prearranger's opinion.

Finally, there are those who prearrange and prefinance their own funeral because they want a specific type of service involving a particular church and/or clergyman and/or funeral director and/or any one of many other reasons trivial to some but important to the person doing the prearranging.

Prearrangements are a part of just about every funeral director's files and practice. They must be recognized as an aspect of present-day funeral service, and important facets of the overall picture must be understood.

Psychological Aspects

Some who have studied death, grief and bereavement say that following death there is a therapy in doing things and in having responsibilities. When most of the details of a funeral have been worked out and perhaps paid for by the deceased, this could leave the survivors with little to do in the actual at-need planning and decision making.

Equally important, survivors and the community may want to do some last thing or things in honor and/or respect and/or in recognition of the deceased. There may be the feeling this shouldn't or can't be done when the person has made his own arrangements. Or, there may be some things that the deceased has arranged which might affect the sensibilities of a survivor, or survivors, and bother them for years, but they won't suggest a change lest they "offend" the departed and his memory.

The Promotions of the Fifties

The idea of the prearranged or prefinanced funeral was not first conceived in the early fifties, but it was then that it became the basis for promotions to sell the idea of prearranging and prefinancing funerals.

Some of these promotions were built around package deals covering the funeral

service, funeral merchandise, flowers, burial vault, cemetery lot, opening and closing of the grave, and the grave marker.

Sales crews were trained and often blanketed an area pushing door bells and at times offering an item of merchandise free to get into the door to make their presentation.

In this presentation the alleged high cost of dying, peace of mind, and a special purchase price of the prearranged service and merchandise were usually stressed.

These developments led to two separate actions which although not related complemented each other.

The Association of Better Business Bureaus, now the Council of Better Business Bureaus, came out with three publications on the subject in seven years. In the same period many states enacted laws to control the prearranging and prefinancing of funerals.

The ABBBI publications are:

1. *Facts Every Family Should Know About Funerals and Interments.* Some paragraphs were devoted to package deals therein.
2. *Questions You Should Ask About Cemetery Lot Promotions.* Since many promotions—pre-need and otherwise—were cemetery initiated, this leaflet was prepared.
3. *Facts You Should Know...Questions You Should Ask...The Prearrangement and Prefinancing of Funerals.*

All three of these publications are kept current and their widespread distribution continues.

Because the last-mentioned booklet is pertinent to this chapter, the following excerpts from it are quoted:

In recent years a growing number of individuals, firms and groups have sought to stimulate public interest in prearranged, prefinanced funeral plans. Among them have been sales organizations and promoters outside the funeral profession who seek to interpose themselves as third parties in the traditional personal and confidential relationship between the funeral director and the survivors of the deceased. Grievous disappointments and severe financial losses have resulted from some unsound promotional schemes foisted on a credulous public by armies of high-pressure salesmen.

* * *

Sometimes, belief that a funeral has been fully prearranged and paid for can create a false sense of security for survivors.

* * *

The simplest way to prearrange a funeral is to leave written instructions for those who will make the arrangements. If advance payments are involved under a contract which does not permit the individual to alter the prearrangements to meet changing circumstances, the possibilities...can lead to serious problems. What assurance do you have that the funds deposited will be intact when the time for their disbursement arrives or that they will be available to you if you want them? Who will receive the interest on your money during the many years which may intervene between the date of deposit and the date of death? Will such interest revert to you? Will you be better off by depositing the money in your own bank where you will get the benefit of all interest earned? You also are free to withdraw your funds in an emergency.

* * *

Savings claims and promises of "bargain" rates are stressed in selling many of these promotional plans. Weigh carefully any representation that a "plan" will give you adequate services for less than you can obtain them from other funeral directors against the fact that the sales commissions and costs must be added to the cost of the funeral under the plan.

The material in these excerpts pinpoints the problem for many of the public.

The State Pre-Need Trust Laws

The questions which the Association of Better Business Bureaus was asking in its booklet on prefinanced funerals were often asked across the country during the fifties and sixties as many states considered legislation to regulate and control the contracts as to such funerals. The chart which is Appendix X gives the names of all the states within the continental limits of the United States. It shows the majority of them with a statute which in some way regulates these contracts. It also gives the basics of each state's statute.

The breakdown of state laws and/or opinions shows, as the Better Business Bureaus point out, that most of these statutes require that all money, or a major share of all monies, paid in advance for funeral merchandise or services, and accruing interest thereon, must be deposited in trust with an approved financial institution until the need for disbursement arises. In most of these states monies paid in advance for burial vaults must also be entrusted and there have been opinions of attorney generals and of state supreme courts upholding this requirement. In some states amounts paid for markers and mausoleum space sold in advance of death must also be placed in trust.

A West Virginia statute was held to be unconstitutional and a new law passed since. The constitutionality of the Arkansas, Idaho, Iowa, Illinois, Kansas, Utah and Texas statutes has been upheld by the supreme courts of those states.

Some promoting prefinanced funerals object to putting in trust or reserve 100% of monies paid in advance for funeral merchandise and services. In the Illinois case one of the suggestions made was that a lesser amount be deposited. The supreme court of the state in its decision points out that the plaintiff cemetery entered the "prearrangement business by choice" and that its procedures invite "regulation of a stringent nature." The matter was appealed to the Supreme Court of the United States which refused to consider the case.

Some Present-day Thoughts About Prearranged and Prefinanced Funerals

In the previously referred to Illinois decision the supreme court of that state said:

In the long interval between full receipt of the purchase price and contract performance the opportunities for fraud are great and risk of insolvency, with consequent inability to perform, apparent.

It is doubtful whether anyone has or will doubt the validity of this statement. And in many areas there has been a slackening of pre-need promotion activity. The economics of the situation has much to do with this for reasons funeral directors know.

The Plan with the Special Price

ABBBI queries a \$795 funeral being sold in advance for \$595. In its brochure an arrangement is cited "between one sales organization and 'participating' funeral homes (in which) the latter are required to represent that a designated funeral, available to customers of the 'plan' at the 'reduced price' of \$595, is 'regularly' priced at \$795. The actual price to the company selling the plan is only \$420."

The BBB asks, "Do you believe that a funeral home can afford to sell services and merchandise honestly priced at \$795 for little more than half that amount and still make a profit?"

Supposing that there was no sales organization, could a funeral home with a plan of providing a \$795 service for \$595 come out ahead with that amount?

If this is in a state where the interest on the monies paid in advance cannot accrue to the benefit of the funeral firm, the amount paid will not increase. Even in those states where the interest can accrue, as earned, to the benefit of the funeral firm, unless the entire amount, or a sizable portion of it, is held for a long period of time, the increment is not large enough to close the gap between the "before-need" and "at-need" figures if both are realistic.

Another factor of importance is the annual increased cost of providing the service. This is especially true if the components of the funeral and a particular casket are spelled out. Few things have gone down in price or remained stable in a number of years. Therefore every cost increase decreases the actual amount available for the funeral.

Finally, if the pre-need contract was solicited by a salesman, it is estimated that 15 to 30% of the total contract price will be used to absorb sales and administration costs.

Income for Federal Tax Purposes

When a funeral is prefinanced, if the firm to whom that money is paid has constructive, permissive or actual use of the money, the money is taxable as income by the federal government for the year in which the money was received. This is true whether the amount is a partial payment or the entire prepaid price of the service.

What to Do

This chapter shows that many states have enacted laws controlling and/or regulating the contracts made in advance of need for funeral services and/or merchandise. This coupled with significant variations in the pre-need laws and the divergent opinions which exist among funeral directors warrants the following recommendations:

1. Pre-need contracts and their solicitation *are* fraught with the danger of fraud and funeral directors should avoid any contract or plan which could harm their clientele or their service or place in the community.

2. Those who wish to prearrange their own funeral or one for someone for whom they have responsibility should be able to do so.
3. When a funeral is prearranged and monies are paid in advance of need for funeral services and/or merchandise including burial vaults, *all* such monies should be deposited in a trust fund with the person or persons prearranging having the control thereof to be entitled to the earnings therefrom. Furthermore such prearranger shall have the right to terminate the contract at any time without forfeiture of any of the funds which have been paid or earnings accrued.
4. Where a contract is entered into it should be in accordance with the laws of the state in which the prearrangement is made. Some state funeral directors associations have prepared contract forms. If there is no pre-need law and/or if no form is available—the suggested wording for one is at the conclusion of this chapter. In all such contracts the funeral director should bind himself only to the kind of funeral and merchandise which will be available at the time of need for the face amount of the contract.
5. Funeral directors should carefully consider the potential negative effects and cost of allowing a third party to step between themselves and their firm and the family through the representations of a third party soliciting a pre-need program or plan which will be serviced by the funeral home when the person for whom the service was prearranged dies.
6. No funeral business should be purchased which has the liability of providing funerals which have been prefinanced in whole or in part until the purchaser of the business is sure the monies paid in advance are on hand for the funerals which will have to be provided.

It is not the intent of the writers of this chapter to discourage individuals and families from discussing funerals and perhaps making tentative plans for a funeral or funerals. This is encouraged especially when there is a family or close friends and they share in the discussion. Death is not as commonplace as it once was. Millions of people in the country today have never experienced a death and funeral of someone close to them. They don't know what is involved and they should.

There is a big difference between tentative arrangements considering survivors and formal agreements which might disregard and adversely affect the sensibilities of those who will mourn.

Where there is no family or its members are disinterested or feel specific prearrangement is good, a formal agreement in line with the following contract suggestion will not only be proper but may also be helpful.

* * *

THIS AGREEMENT made and entered into this _____ day of _____ 19____, by and between _____, party of the first part, hereinafter sometimes referred to as "Funeral Director," and _____, party of the second part, sometimes hereinafter referred to as "Buyer."

WITNESSETH:

WHEREAS, party of the second part desires and hereby requests to enter into a contract to pro-

vide for payment for funeral merchandise and/or services in advance of death, which merchandise and/or services are to be delivered and performed subsequent to the death of _____, hereinafter referred to as Beneficiary as follows:

Professional services and casket

NOW, THEREFORE, in consideration of the mutual promises, it is hereby agreed as follows:

1. Funeral Director will supply to Beneficiary out of the funds deposited by Buyer the services and/or merchandise as set forth above for the sum of \$_____, payable as follows:

2. Said funds as aforesaid shall be placed with _____ hereinafter sometimes referred to as "Trustee" within ten days after receipt thereof. In the event, upon the death of Beneficiary, said funds are inadequate to provide for the services above described, then the funds shall be used by the Funeral Director to provide professional services and/or merchandise of a type as nearly similar as may be purchased with said funds at the time of Beneficiary's death.

3. Upon the death of Beneficiary, the said funds shall be released by the Trustee forthwith to the Funeral Director upon receipt of a certified copy of certificate of death or other evidence of death satisfactory to said Trustee and where required by State Law, an affidavit by the Funeral Director that the funeral services and/or merchandise which has been contracted for have been so provided and that the cost was not less than the amount on deposit. Any amount on deposit not required to pay for funeral services and/or funeral merchandise shall be returned on request to the Buyer if living, or if not living to the estate of the beneficiary.

4. Said funds shall remain on deposit with the Trustee and shall remain intact as a fund until the death of the Beneficiary, or until withdrawal by Buyer as hereinafter provided; and said funds may be withdrawn only for the full amount thereof and not in part, and said withdrawals must comply with the rules and regulations of said Trustee; provided, however, that the Buyer may, at any time upon complying with the rules and regulations of the Trustee, withdraw the funds deposited to date with the Trustee pursuant to this contract. In the event of withdrawal the Buyer shall notify the Funeral Director within twenty-four hours prior to such withdrawal, and in the event the withdrawal is completed, the Funeral Director shall be relieved from any of the obligations contained in this agreement.

5. It is mutually agreed that the said Trustee is only the repository of said funds and is not liable for the fulfillment of the contract by the Funeral Director, and upon payment over to said Funeral Director of the said funds, or repayment to Buyer, the Trustee's liability shall terminate.

6. Interest earnings which may accrue on said funeral fund shall be added to and become part of said fund.

7. Upon the death of Buyer, in the event the said funds shall exceed the amount required to provide services set forth above, any surplus shall be paid over to Beneficiary's estate (or) to _____, by the Funeral Director.

8. This Agreement shall be binding upon the heirs, administrators, executors and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed the day and year first above written.

THE WHOLE-MAN TOTAL-FUNERAL CONCEPT

*Howard C. Raether
and
Robert C. Slater*

Example: John J. Jones dies of a disfiguring malignancy. He is survived by his widow, one son, two daughters, one daughter-in-law, one son-in-law and two grandchildren. At the time of his death his married daughter is less than a month from having her first child. His unmarried daughter is engaged. Her fiance is in the army on duty within the country.

During the first contact with the son who is handling arrangements tentatively awaiting final plans for the funeral, four areas of concern of the family become apparent. They are:

1. Will restoration of the father's face be such that viewing will be possible?
2. The pregnant daughter was her father's favorite. How will she hold up? To what extent should she participate in the arrangements and during the various periods of the funeral.
3. What about the son-in-law to be? Might he get an emergency leave to be at the funeral? He could be a real comfort to his future bride.
4. The two grandchildren are ages 7 years and 10 months. The boy, 7, the first grandchild of the deceased, loved his "Bompa" very much. Should he be allowed at the funeral home? Should he see the casketed body of his grandfather? Should he go to the service?

This hypothetical situation could well be a real one. It could be more complex or consist of only one or two "concern areas." It is spelled out not to present some problems and the solutions to them. Rather it is outlined to introduce what happens

daily in funeral homes and two ways of considering what the funeral home owner(s) and other licensees should know and do in this situation.

Two Schools of Thought

There are two basic schools of thought regarding the serving of families and the role of funeral service licensees and the education necessary for them to fulfill their tasks. One is known as the whole-man-total-funeral concept. The other is the owner-manager-technician concept. A statement on how two funeral homes, one using the whole-man concept and the other the owner-manager-technician concept, might serve this family is essential to any present-day appraisal of funeral service practices.

Before spelling out this appraisal it should be made clear that this is not a discussion of the philosophies of funeral homes with a sizable number of funerals annually and those with a small volume. There are large firms with the whole-man-total-funeral concept. There are small firms with the owner-manager-technician philosophy, firms which use service companies to do some of the things involving personal contact even when the funeral-director-owner or an associate is available.

The Whole-Man-Total-Funeral Concept

In a funeral home where the whole-man-total-funeral concept prevails, after the receipt of the call on the death of John Jones the funeral-director-owner and/or manager or one of his staff would have the responsibility to follow through with the family. This licensee would provide the person-to-person professional service outlined in another chapter. He would tell of the advantages of viewing the deceased and if he did not do the restorative work to make the viewing possible, he would check on it periodically.

The person "waiting on" this family would alert the others on the staff to the condition of the pregnant daughter. Throughout the arrangements and period of the funeral he would watch for signs that would indicate the mother-to-be ought to be momentarily removed from the central scene. If need be, he might suggest calling her doctor.

This funeral director also could suggest contacting the Red Cross, or he might do it himself if the fiance asks for emergency leave and can't get it. He might also talk to the clergyman to see if he feels it important enough to call the chaplain for the fiance's army unit about the leave.

He undoubtedly would counsel with the family about the grandson's viewing the body and his part in the funeral, if any. There again he would talk to the clergyman and if the youngster knows the cleric well, he might be one of the two or three with the boy as he goes to see his "Bompa."

The whole-man-total-funeral concept makes one person licensed to practice funeral service responsible to a family to try to meet all their needs in relation to the total funeral. While there undoubtedly will be some delegation of duty and authority, the person "waiting on" the family is responsible for the funeral of the one they loved. And if the funeral home owner is not the one, he will at some time or times check with the licensee responsible and the family to see how things are coming.

The Owner-Manager-Technician Concept

When the original death call is received by a funeral home administered under the owner-manager-technician concept there are variations in what might happen depending on the size and practices of the firm. But unlike the previously described concept, the same licensee will not be involved in all facets of the funeral. Rather there will be one or more persons with specialized knowledges or skills who will perform their tasks and having done so their responsibility for that "service" ends. For instance, at the time of the removal a family may ask about several matters pertaining to funeral arrangements which the specialized technician may not be able to answer, necessitating a referral to another staff person.

In some funeral homes with this concept there are persons who do the arranging, there are others who are with the family for the casket selection, there are those who only embalm, and there might be some who just direct the actual funeral service.

Most times these individual functionaries report to a central office or person. Sometimes that person is not a funeral service licensee. What complicates the situation is that anyone of these individuals will find he must act alone sometimes without support from anyone else.

Following the death of John Jones the areas of concern might become apparent to those associated with the funeral home with the owner-manager-technician concept. But those who argue for the whole-man concept--as the authors of this chapter do--say that the chances are less that they will for two reasons. First, the departmentalized or specialized services of the funeral home bring no single staff member in constant communication with the family so as to allow them a total picture of what is happening and what is needed. Second, because the family sees and makes various arrangements with two or three people, they are less likely to get sufficiently close to one of them to make some requests they might have, or to "unload" some of their feelings.

Rabbi Dr. Earl A. Grollman, who is a well-known pastoral psychologist, paraphrased an article for clergymen in the following manner: "The word *cure* has its root in a word that originally meant *care*. The funeral director is someone who cares about, who takes care, and who takes care of. He is called upon to cure, to encourage as well as to console, to overcome soul-wounds. His is part of a meaningful care-taking profession."

This definition fits most funeral service licensees. But its ultimate more often than not is found in those practicing with the whole-man--total-funeral concept.

Licensing—Education—Recruitment

It is estimated that approximately 75% of all persons licensed in funeral service hold a funeral director's and an embalmer's license, or a combination of both. There are seven states which do not license funeral directors as such. There are eleven states where there is a single license law covering both funeral directors and embalmers, or where the requirements for funeral directors include embalmer prerequisites.

The whole-man--total-funeral idea is best served when the licensee is educated *and* licensed to do all that is done or might have to be done in a funeral service practice.

The reasoning for this is valid when looking outside of funeral service and when

realistically confronting the facts within funeral service.

It is admitted that there are men and women who prefer the technical aspects of the profession. They like to embalm and do restorative work. It is also true that some licensees seldom prepare a remains because their personal contact and administrative duties keep them fully occupied.

There are physicians who specialize in surgery. There are lawyers who do nothing but tax work. There are dentists whose practice is limited to extracting teeth and pharmacists who are research chemists. But in each of these fields the *general* education and license is that which must first be obtained and the specialization follows.

In funeral service the reasons are as logical and compelling.

It is helpful in the serving of people for all licensees to be fully qualified. As an example, the owner or manager should have the basic knowledge if not the experience to understand an embalming problem and perhaps help solve it, or at least to be able to relate it to someone.

Likewise a licensee specializing in technical functions should be able to fill in in other capacities in the absence of those who do this normally. He should also be able to serve those who may want him as their funeral functionary.

The following chapter deals with personnel practices. But it is pertinent at this point to state that for the funeral to continue with care taking personalized service given by licensed personnel there must continue to be an influx of such personnel to replace those who die, retire, or leave the field.

As long ago as 1957 the Joint Commission on Mortuary Education said in its report that the concept of the person licensed to practice funeral service must reintegrate the embalming with the funeral directing function. Also the role of the licensee must be expanded to include services which have a therapeutic and mental health value performed for the living.

The Commission was formed in April 1956 "to examine the bundle of tasks that have been socially and legally assigned as the occupational province of present-day American funeral service personnel with a view to determining the educational experiences, both preparatory and in-service, needed for their efficient and satisfactory performance."

The conclusion previously stated was predicated on the finding that embalmers were faced with an occupational dilemma—with ambiguous status. The reasons for this were summarized in the following manner:

1. Embalming in the minds of funeral service personnel is associated with the "back room" of the funeral home.
2. Dealing with the clientele "out front" is valued by funeral service staffs.
3. While not all who are primarily embalmers are discontented, those who are are critical in a manner symptomatic of frustrated career aspirations.
4. Funeral directing only in the dual license sense (funeral director and embalmer) means management, personal contacts and funeral direction. Paradoxically in many states this requires the least formal education and training.
5. Embalmers and other technicians have had little success in organizing associations other than unions.

There is one other point that the Commission made more than a decade ago which might be viewed as prophetic. In its analysis the Commission used the phrases "house of management" and "house of labor." It is our opinion that the whole-man-total-funeral concept with the single license will discourage a division of personnel whereas the owner-manager-technician concept will encourage it to the point where there may be a separation of "management" and "labor" in a funeral home.

A funeral home owner must face up to the following facts:

"Back room" men can be obtained, but often they must be paid as much or more salary as are qualified personnel. Also, these men *do* represent the funeral home and the owner(s) for better or worse. However, it is rare that a man who will make a worthwhile staff member can be recruited to be a "back room" man, a "second class citizen." There are times when the owner is away and one or more staff members fill in for him. Or he may be busy. The funeral is just as important to the people served by these staff members as it is to those served by the owner or manager. Irreparable harm can be done by a mistake or mistakes. There is no doing it over. The greater the education of a survivor or survivors the greater the possibility of his expecting good service by an equally or better educated person associated with the funeral home. The more closely a man fits the requirements of the whole-man concept the greater his chances are of meeting the challenge and needs of those of the "new" generation.

Paul R. Keenan, now of the University of Missouri, put it well when he said in his "Education for Tomorrow" :

If the funeral service practitioner of today and tomorrow is to be successful in his contacts with other members of his community, he will be expected to meet them on an equivalent academic basis. If he does not, not only will he be at some disadvantage, but many opportunities both personal and professional which he might otherwise enjoy will not be available to him.

We must also be aware that the basic fund of knowledge is increasing in this day and age at a rate in which it is doubled every ten years. This has resulted in many changes in sociological and professional practices. In many fields it has resulted in computer storage of information—in others it has established specialties, and sub-specialties within professions and occupational groups. Employment opportunities unknown ten years ago are commonplace today, and this has contributed much to the complex situation in which today's citizen must function and which he hopes to understand.

There is no doubt, unless some unforeseen circumstance arises, that knowledge will continue to become available at a constantly accelerating rate, accompanied by a comparable complexity of life; and the person who finds himself unprepared for it will experience some difficulty in keeping abreast of new developments in everyday living. If this is true of citizens attempting to find a place in life which is satisfying to them, it will also be true of the professional who will find the many faces of society constantly changing, and who will have to cope with these changes if he is to survive. It should be remembered that he must operate both as a member of his society and also as a professional person to satisfy special needs of the community in which he elects to function.

Funeral service has been comfortable in the knowledge that it has developed according to specific customs based on the needs of the people, but no one can adequately predict the lines on which it will develop further. It does not, however, require a soothsayer to

predict that funeral service will be subjected to changes because the needs and demands of the public are changing, and will continue to change.

In the almost 100 years of licensing the funeral functionary, there have been three basic steps of progression to meet the *needs and demands of change*, with a fourth now developing fast:

1. The embalmer-public-health concept.
2. The advent of the funeral director license to embrace more than embalming and to place responsibility for actions beyond preparation of the body.
3. The dual license law in most states with most licensees being both funeral directors and embalmers, or holding a combination license.
4. The single license to practice funeral service predicated on the whole-man-total-funeral concept to encompass services essential to the place of the licensee as a "care-taker," or "care-giver," or "gate-keeper" in America in the last third of the twentieth century.

APPENDIX X

Basic Data on State Pre-Need Trust Laws

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
1. ALABAMA	no law					
2. ALASKA	no law					
3. ARIZONA	yes	yes	no	100%	100%	100%
4. ARKANSAS	yes	yes	yes	100%	100%	none
5. CALIFORNIA	Funeral directors only	yes	no	100%	Used to pay expenses and forfeitures	100% of payments
6. COLORADO	yes	yes	yes	85%	Up to 15% of contract	Amount of payments & interest accrued.
7. CONNECTICUT	Insurance law governs	yes	yes			
8. DELAWARE	Participation in such activities considered grounds for suspension of revocation of license.					
9. DISTRICT OF COLUMBIA	no law					
10. FLORIDA	yes	yes	yes (only licensees can arrange)	100%	100%	100%
11. GEORGIA	yes	yes	yes	100%	100%	100%
12. HAWAII	no law					
13. IDAHO	yes	no	no	100%	100%	100% less cost of operating trust
14. ILLINOIS	yes	yes	yes	95%	95%	Amount in trust account less 25% or \$35.00 whichever is greater.
15. INDIANA	yes	yes	yes	100% less trustee's expense	100% less trustee's expense	Amount in trust account less 10% or \$35.00 whichever is greater
16. IOWA	yes	no	no	80%	100%	Amount in trust account on mutual consent

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
17. KANSAS	yes	no	no	100%	100%	100%
18. KENTUCKY	yes	yes	yes	100%	100%	100%
19. LOUISIANA	Participation in such activities possible grounds for revocation of license.					
20. MAINE	yes	no	no	100%	100%	100%
21. MARYLAND	yes	no	Licensed funeral director and embalmer only	100%	100%	100%
22. MASSACHUSETTS	no law					
23. MICHIGAN	yes	no	no	100%	100%	100%
24. MINNESOTA	yes	no	no	100%	100%	100%
25. MISSISSIPPI	Pre-need contracts limited severely and controlled by Insurance Commissioner					
26. MISSOURI	yes	yes	no	80%	none	73%
27. MONTANA	yes	yes	no	100%	100%	100% on mutual consent
28. NEBRASKA	yes	yes	no	100%	100%	100%
29. NEVADA	Life insurance law governs					
30. NEW HAMPSHIRE	no law	Burial associations prohibited				
31. NEW JERSEY	yes	no	no	100%	100%	100%
32. NEW MEXICO	Life insurance law governs					
33. NEW YORK	yes	yes	no	100%	100%	100%
34. NORTH CAROLINA	yes	yes	yes	100%	100%	100%

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
35. NORTH DAKOTA	yes	yes	Can be engaged in only by operators of licensed funeral establishments	100%	100%	100%
36. OHIO	yes	no	no	100%	100%	100%
37. OKLAHOMA	yes	yes	yes	90%	100%	100% of amount paid into trust fund
38. OREGON	yes	no	no	100%	100%	100%
39. PENNSYLVANIA	yes	yes	no	last 70%	100% on deposit	last 70% of payments
40. RHODE ISLAND	no law - Pre-need arrangements may be grounds for suspension or revocation of license					
41. SOUTH CAROLINA	no law - funeral directors may not collaborate with life insurance companies in this area					
42. SOUTH DAKOTA	yes	no	no	100%	100%	100%
43. TENNESSEE	yes	yes	no	100%	100%	100%
44. TEXAS	yes	yes	yes	90%	100% less trust expenses	All of payments held in trust - no interest
45. UTAH	yes	yes	yes	at least 75%	100% of trust	90% of the amount placed in trust
46. VERMONT	no law					
47. VIRGINIA	yes	no	no	100%	100%	Mutual consent
48. WASHINGTON	Insurance law governs					
49. WEST VIRGINIA	yes	yes	no	95%	95%	Amount in trust less 25% or \$35.00 whichever is greater

STATE	PRE-NEED STATUTE	STATE CONTROL AGENCY .	PERMIT REQUIRED	AMOUNT OF PAYMENTS PUT IN TRUST	AMOUNT OF INCOME PART OF TRUST	AMOUNT BUYER CAN WITHDRAW
50. WISCONSIN	yes	no	no	100%	100%	100%
51. WYOMING	Commissioner of Insurance sets out rules and regulations					

Funerals: A Bitter Note

WASHINGTON — (AP) — An organization of eight million retirees charged yesterday that the funeral industry has engaged in "exploitative, unfair and deceptive practices" against bereaved customers.

Dr. Esther Prevey of Kansas City, Mo., told Congress that the National Retired Teachers Association combined with the American Association of Retired Persons strongly endorses proposed Federal Trade Commission regulations requiring full disclosure of funeral costs.

"The many graphic examples of unfair and deceptive practices we have already received

from our members tend to confirm our belief that large numbers of older Americans have already suffered serious economic and emotional harm under the present system," Dr. Prevey said in testimony for a House small business subcommittee hearing.

She cited as examples some of the more than 2,000 complaints the association and the FTC have received:

—A Falls Church, Va., man was charged \$1,000 for two burial vaults he learned later could have been purchased for about \$40 each.

—A person in Tennessee was charged \$1,591 for unspecified funeral

services in addition to the cost of a casket, vault, clothing and obituary notices.

—A Chicago woman was about to pay \$550 for a death certificate and pick-up and delivery of the body, until she learned the same services could be obtained elsewhere for \$155.

—Several persons were charged for embalming and cemetery plots for bodies that were cremated.

"We are not talking about isolated instances of abuse by a few so-called small businesses," said Dr. Prevey, a member of the association's legislative council.

"The issue here is a

widespread pattern of misrepresentation, non-disclosure of price information and anticompetitive practices in a multibillion industry encompassing more than 22,000 funeral homes."

Under the present system, she added, the bereaved "are often forced to make one of the largest consumer purchases of their lives under severe time pressure and emotional distress and with an almost complete lack of information or experience."

The Federal Trade Commission plans to open hearings in April on the question of forcing funeral homes to tell if local laws do not require embalming, sealer caskets or an outer burial receptacle.

Howard C. Raether, executive director of the National Funeral Directors, said Wednesday such rules could force one-fourth of the funeral homes out of business and bring higher burial costs to the public.

Funeral director seeks stronger state regulation

By SALLY W. JONES
Daily News Staff Writer

An Anchorage funeral director is meeting with state legislators today in an effort to introduce a bill that would further regulate such businesses.

Richard Rome, a partner in the Evergreen Memorial Chapel funeral home here, will present a draft bill to key legislators for introduction during the current Juneau session.

THE BILL WAS drafted after the chapel discussed with other funeral directors statewide existing funeral home and embalming regulations in the state and what needs to be done to strengthen them.

Alaska statutes now cover only embalmer's licenses and include no clear provision for revoking a license for misconduct or other ethical or criminal violations.

A bill proposing more stringent funeral home and embalmer's laws was introduced in the last session of the legislature, but died in committee.

THAT BILL, requested by then-Gov. William Egan, followed a much-publicized case concerning an

Anchorage funeral director, Gordon Green, and the five funeral homes he operated in and near Anchorage.

Green was indicted last year on criminal charges of embezzlement and holding a body for debt. The embezzlement charge stemmed from allegations he resold a casket. He was found guilty of both charges. The funeral director also was the subject of civil suits and an attorney general's action to have his license revoked.

The law being sought by Evergreen Chapel today would strengthen many of the regulations that prevented prosecutors last year from taking further actions in cases such as Green's.

UNDER PRESENT statutes, a funeral director can maintain his holdings in a funeral home even though his license has been revoked. Current laws also allow licensed directors and embalmers from other states reciprocal licensing rights here, even if other states' licensing regulations are weak.

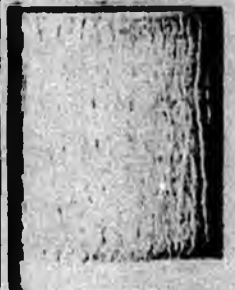
The bill proposed by the chapel here also would require a person to train for at least one year in a licensed mortuary

before obtaining an embalmer's license. Testing procedures for prospective licensees also would be strengthened by requiring familiarity with funeral law, accounting, psychology and management. And if the bill is approved and signed by the governor, funeral homes would be required to itemize funeral costs and services to clients.

Also included in the law are penalties of up to six months in jail and \$5,000 for violating provisions of the act.

THE LAW WOULD allow all current license holders to retain their licenses, to be renewed yearly; and would provide a permit system for bush residents who now care for and dispose of the dead.

Lee Moeglein, an Evergreen funeral director and spokesman, said the chapel decided to seek the legislation because little has been done to strengthen funeral regulations since the Green case came to light. He said the bill Evergreen is proposing was drafted using model legislation compiled by the National Funeral Directors' Association and the states of Oregon and Minnesota.



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LAWRENCE M. GRITTON

January 20, 1976

William G. Berrier, Esq.
Legislative Affairs Agency
State of Alaska
Pouch Y, State Capitol
Juneau, Alaska 99801

Dear Mr. Berrier:

Pursuant to our telephone conversation, please find enclosed a copy of the Federal Trade Commission Report on the Proposed Funeral Industry Trade Practices Rule. The Commission is presently scheduling hearings on the Proposed Rule throughout the country to consider opinions concerning their comments.

H.B. 509 as proposed will give legislative sanction to the Alaskan funeral directors to engage in the types of practices found by the FTC to be harmful to the public. In this regard, we wish to draw your attention to pages 1 through 7 of the Report which contain a discussion in general of some of the practices found to be harmful and pages 19-20 and 85-103 which discuss the manner in which funeral directors have interfered with the market so as to limit competition. In particular we draw your attention to the discussion starting at page 86 about how the funeral directors have reinforced cultural benefits with an "elaborate web of state and private restrictions."

We are, as I advised you, special counsel to one of the national cemetery associations as well as several state cemetery associations. I personally am a member of the Advisory Board to the Comptroller of the State of Illinois (who has jurisdiction of the Funeral and Burial Laws of the State of Illinois), special counsel to the Louisiana Cemetery Board (whose Cemetery Act I drafted). We also represent numerous cemeteries and funeral homes throughout the country.

William G. Berrier, Esq. -2-

January 20, 1976

What's the story!

It is surprising that the State of Alaska does not have extensive legislation on the subjects of funeral homes as well as cemeteries and we are in agreement that some legislation is required. However, H.B. 509 is the type of legislation which while appearing to protect the consumer is designed in fact to provide protection for a few people against free competition and to restrict the marketplace in order to allow the funeral director to continue to take advantage of the public by performing their services only at the time of a death, when the consumer's ability to make rational choice is severely diminished. These protections and restrictions are accomplished simply by doing the following: first by providing that only licensed funeral directors can make sales; secondly by prohibiting solicitation in advance of need by making it a basis for loss of a license and third by requiring that 100% of the funds paid in on a pre-need sale must be placed in a trust with the consumer having an unlimited right of refund.

Obviously, what seller is going to make sales when they know they could lose their license, be required to put all the funds into a trust so that any sales costs would have to be borne from other sources with the customer being allowed to terminate the sale at any time without any compensation to the seller.

Alaska is most fortunate that it has the opportunity to review the extensive legislation in the other states which have dealt with these subjects in a realistic manner and so avoid the pitfalls of the restricting legislation which as illustrated by the FTC Report has severely harmed the public.

H.B. 509 unfortunately contains many of the restrictive provisions intended to accomplish those goals which the FTC has recognized have harmed the public. H.B. 509 also does not reflect the extensive modern legislation throughout the country which has both allowed the public the opportunity to consider alternatives at a less emotional time and yet be protected from the pitfalls by accepted means which do not prevent the seller from entering the marketplace.

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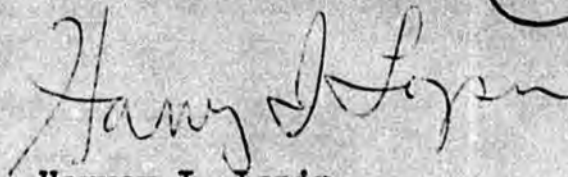
William G. Berrier, Esq. -3-

January 20, 1976

I hope that you can see the legislature of Alaska is embarking onto an area on which very careful study is required before adequate legislation can be enacted. We would strongly suggest that H.B. 509 does not accomplish the intended goals and as such should be sent back for further consideration in order to allow the opportunity for you to review other state legislation. In this regard, I would be happy to give whatever assistance were required.

Cordially,

LAPIN, PANICHI & LEVINE, LTD.

A handwritten signature in cursive script, appearing to read "Harvey I. Lapin". The signature is written in dark ink and is positioned above the typed name.

Harvey I. Lapin

HIL:cb

enc

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LAWRENCE M. GRITTON

January 20, 1976

att.
Jlu —

Representative Robert Bradley
House of Representatives, State of Alaska
Pouch V, State Capitol
Juneau, Alaska 99801

Re: H.B. 509

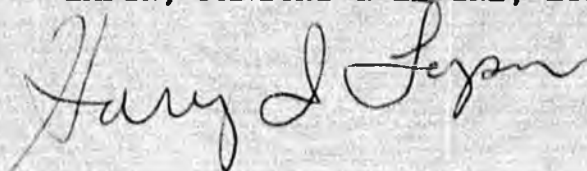
Dear Representative Bradley:

Pursuant to my discussion with Mr. Berrier, I am enclosing a copy of my letter to him with a copy of the Federal Trade Commission report.

We would appreciate your advising us of the status of this Bill as well as when the next hearing will be so that we may attend.

Cordially,

LAPIN, PANICHI & LEVINE, LTD.



Harvey I. Lapin

HIL:cb

encs

ALASKA PLANNING AND MANAGEMENT

Consulting Service

Bernard L. Marsh, President

505 W. Northern Lights Blvd.
Suite 101
Anchorage, Alaska 99508
Tel. (907) 279-3195

January 30, 1976

Rep. W. E. Bradley, Chairman
House Commerce Committee
State Senate
Pouch "V"
Juneau, Alaska 99801



Dear Bob:

As a consultant I have conducted several feasibility studies in the field of mortuary science, and have learned quite a bit about the funeral director business. I would like to make some comments about CS for HB-509, which underwent public hearing between sessions and will be heard again by the joint commerce committees next week.

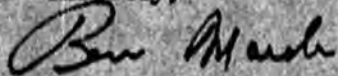
I believe the dual licensing system is the most logical, and would be fairest to the existing funeral directors in Alaska. There should be one license for embalming and preparation of human remains, and a separate license to operate a funeral business. The two functions are separate and distinct, the first requiring training in a technical skill, and the second requiring business acumen and public relations skills. That is not to say an individual could not hold or obtain both licenses, but many persons are suited to one role and not the other.

If a law is enacted requiring funeral directors to be licensed embalmers, several successful and well-run businesses in this state would be immediately placed under a cloud and in this sensitive profession would be at a competitive disadvantage. Such a requirement would serve no useful purpose that I can see, and would do considerable harm.

It appears to me that those who are pressing for a single license system requiring funeral directors to also be licensed embalmers are doing so with ulterior motivation. They want to restrain free competition in this field by hampering or freezing out their competition.

I expect to testify at the joint committee hearing on behalf of the Alaska Allied Funeral Services Association.

Sincerely,



Bernard L. Marsh, President
Alaska Planning & Management, Inc.

BLM/ap



JUNEAU ALASKA

Alaska State Legislature House

From the office of Representative Bob Bradley
Chairman of the House Commerce Committee

FOR IMMEDIATE RELEASE

A joint hearing on House Bills 264, 271 and 509, dealing with mortuary practices will be held by the House and Senate Commerce Committees. It will take place on Friday, February 6 at 8:00 a.m. in Room 120 of the Court Building in Juneau.

The committees invite all interested persons to present testimony at that time. Representative Bob Bradley (D-Anchorage) Chairman of the House Commerce Committee stated, "In the past we have heard largely from members of the industry. We are particularly interested in hearing about good and bad experiences citizens have had with those engaged in the practices of mortuary sciences following the death of their loved ones".

Written testimony will also be accepted. It should be addressed to Representative Bob Bradley, Pouch V, State Capital, Juneau, Alaska 99811.

THE LEGISLATURE OF THE STATE OF ALASKA

FISCAL NOTE

Second Session - Ninth Legislature

I. REQUEST

Bill No. House Bill 509 (proposed CS)
 Title: An Act relating to funerals and the practice of mortuary science
 Requested by: House Commerce Committee Date: _____
 Return Date Requested: _____
 Agency: Commerce Program: Licensing Professions

II. FISCAL DETAIL

Budget Request Unit(s) Affected: Regulating and Licensing of Professions

A. EXPENDITURES: (Thousands of dollars)

OBJECT	FY 76	FY 77	FY 78	FY 79	FY 80	FY 81
100 PERSONAL SERVICES						
200 TRAVEL		6.0				
300 CONTRACTUAL		5.0				
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		11.0	.0	.0	.0	.0

B. FUNDING: (Thousands of dollars)

GENERAL FUND		11.0	.0	.0	.0	.0
FEDERAL FUNDS						
OTHER						

C. POSITIONS:

PERMANENT/TEMPORARY	/	0 /	0 /	0 /	0 /	0 /
MAN MONTHS (P./T.)	/	0 /	0 /	0 /	0 /	0 /

From the office of Representative Bob Bradley
Chairman of the House Commerce Committee

FOR IMMEDIATE RELEASE

A joint hearing on House Bills 264, 271 and 509, dealing with mortuary practices will be held by the House and Senate Commerce Committees. It will take place on Friday, February 6 at 8:00 a.m. in Room 120 of the Court Building in Juneau.

The committees invite all interested persons to present testimony at that time. Representative Bob Bradley (D-Anchorage) Chairman of the House Commerce Committee stated, "In the past we have heard largely from members of the industry. We are particularly interested in hearing about good and bad experiences citizens have had with those engaged in the practices of mortuary sciences following the death of their loved ones'".

Written testimony will also be accepted. It should be addressed to Representative Bob Bradley, Pouch V, State Capital, Juneau, Alaska 99811.



JUNEAU ALASKA

Alaska State Legislature House

February 3, 1976

MEMORANDUM

TO: All Members of the House Commerce Committee

FROM: Representative Bob Bradley, Chairman
House Commerce Committee

The Commerce Committee will meet Friday, February 6th at 8:00 a.m. in Room 120 of the Court Building for a public hearing on House Bills 264, 271 and 509 dealing with mortuary practices.

This will be a joint House and Senate Commerce Committee meeting.

February 18, 1976

Mr. Robert Mellin
3414 Knik
Anchorage, Alaska 99504

Dear Mr. Mellin:

Thank you for your letter concerning the mortuary science bill which is presently in my committee

The committee has expressed their desire to hear from the public and their experiences with businesses. I will relay your experiences and personal views to the committee.

Again thank you for expressing your views on this matter.

Sincerely,

Bob Bradley

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DEAR REPRESENTATIVE BRADLEY,

MY WIFE AND I HAVE SOME THOUGHTS ON THE MORTUARY SCIENCE BILL. AS ONE WHO HAS HAD TO SELECT A CASKET IN RECENT TIMES I WOULD LIKE TO POINT OUT THAT THE SELECTION WAS POOR. FAR TOO EXPENSIVE FOR THE AVERAGE FAMILY FACING A DRASTIC CHANGE WHEN A BREAD EARNER IS LOST TO A FAMILY.

ALSO, IT SHOULD BE LAW IN ALASKA THAT A MORTUARY MUST OFFER A RENTAL PROGRAM OF A REASONABLE NATURE. THERE ARE THOSE WHO WANT TO BE CREMATED IN A VERY INEXPENSIVE BOX OR CASKET YET FOR VIEWING PURPOSES RELATIVES DO DESIRE SOMETHING BETTER.

WE DO NOT WISH TO SEE ANY BUSINESS OVERLOADED WITH UNNECESSARY REGULATION BUT THE " MORTUARY BUSINESS " HAS NOT COOPERATED TO THE EXTENT WE BELIEVE THEY SHOULD, WITH THE PUBLIC.

BELIEVE YOU CAN RESOLVE THIS IN THE PUBLIC'S INTEREST AND YET NOT BURDEN THE BUSINESSMAN.

SINCERELY,

Bob Mellin
3414 Knick
Anch.

SPENARD HEIGHTS MORTUARY and CREMATORY

3804 SPENARD ROAD

• SPENARD, ALASKA •

279-3741

FEBRUARY 13, 1976

REPRESENTATIVE BOB BRADLEY
CHAIRMAN, HOUSE COMMERCE COMMITTEE
POUCH V
JUNEAU, ALASKA 99801



DEAR REPRESENTATIVE BRADLEY:

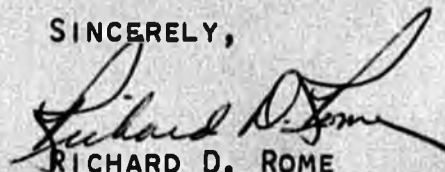
CONCERNING HOUSE BILL 509, THERE ARE TWO ITEMS THAT I THINK ARE IMPORTANT TO THE PUBLIC AND SHOULD BE KEPT IN THIS BILL.

ONE IS TO LICENSE BY A SINGLE LICENSE METHOD ALL PRACTITIONERS IN FUNERAL SERVICE. SOME 75 TO 80% OF ALL PRACTITIONERS THROUGH OUT THE NATION HOLD BOTH LICENSES. IT HAS BEEN PROVEN THAT A PERSON HOLDING A SINGLE LICENSE TO PRACTICE ALL SEGMENTS OF MORTUARY SCIENCE DOES NOT DEMAND A HIGHER WAGE SCALE. FUNERAL HOMES SERVING COMMUNITIES OUTSIDE OF THE LARGE METROPOLITAN AREAS REQUIRE PEOPLE WHO HOLD BOTH LICENSES, AND FACTUALLY ARE NOT INTERESTED IN A PERSON WHO HAS JUST A LICENSE TO PRACTICE FUNERAL DIRECTING OR JUST A LICENSE TO EMBALM. YOU HAVE LETTERS ON YOUR DESK WHICH INDICATE THAT EVEN THE PROPONENTS OF THE DUAL LICENSE ARE INTERESTED IN HIRING PERSONS ABLE TO PRACTICE ON A "WHOLE MAN" BASIS. SOME OF THE PRESSURE TO LICENSE DUALY IS FROM THOSE SEEKING TO LICENSE A SPOUSE AS A FUNERAL DIRECTOR THROUGH THE GRANDFATHER CLAUSE IN THE LAW. IT SHOULD ALSO BE NOTED THAT A GREAT DEAL OF THE DEFINITION AND HAIR SPLITTING PROBLEMS IN ATTEMPTING TO DEFINE THE FUNERAL DIRECTOR, WOULD BE ELIMINATED FROM THE BILL SHOULD YOU GO TO A SINGLE LICENSE SYSTEM. ADMINISTRATION OF THE LICENSING PROCEDURES WOULD BE GREATLY REDUCED FOR THE COMMERCE DEPARTMENT.

TWO IS THE PORTION OF THIS BILL RELATING TO THE SALE OF PRE-NEED/PRE-FINANCED FUNERALS. THIS IS SOUND AND WELL WRITTEN. THE PUBLIC AT PRESENT RECEIVES NO PROTECTION IN THIS AREA, AND THE SALE OF THESE FUNERALS IS ON THE INCREASE IN ALASKA. THE LAW HAS BEEN PROVED CONSTITUTIONAL TIME AND TIME AGAIN IN OTHER STATES. IT DOES NOT TAKE AWAY THE ABILITY OF THOSE DESIRING TO PRE-ARRANGE AND PRE-FINANCE FUNERALS TO DO SO. THESE SERVICES HAVE ALWAYS BEEN A PART OF EVERY FUNERAL HOME THROUGH OUT THE STATE, AND WILL CONTINUE TO BE OFFERED. IT SHOULD BE NOTED ALSO, THAT NO ONE WILL BE PUT OUT OF BUSINESS BY THE PASSING OF THIS LEGISLATION. THERE IS NO FUNERAL HOME PRESENTLY OUT SELLING (DOOR TO DOOR) PRE-FINANCED FUNERALS. THOSE CEMETERIES THAT HAVE ENTERED THIS FIELD STILL HAVE THERE PRE-NEED AND AT-NEED CEMETERY LOT SALES TO STAY IN BUSINESS.

I HOPE THAT YOU AND YOUR COMMITTEE WILL CONSIDER THESE POINTS, AND THAT HB 509 CAN BE PASSED OUT OF YOUR COMMITTEE TO THE RULES COMMITTEE WITHIN THE NEXT TWO OR THREE WEEKS.

SINCERELY,



RICHARD D. ROME

SPENARD HEIGHTS MORTUARY and CREMATORY

3804 SPENARD ROAD

• SPENARD, ALASKA •

279-3741

February 14, 1976

Mr. Billy Berrier
Legislative Affairs Office
Capital Building
Juneau, Alaska 99801

Dear Mr. Berrier:

There has been much discussion on HB 509 relevant to the requirements that an applicant for licensure must first meet to obtain a license to practice in Alaska. We have discussed at great length the amount of college credits, type of courses, examinations and apprenticeship requirements. This is good, and I think has proven fruitful in making some important decisions.

X There is one small word, the word "or" placed at the end of section (a)(1) of 08.42.070 RECIPROcity, that renders the whole licensure requirement question moot!

What this "or" does is take away all of the educational standards from the license for those who wish to practice in our State by reciprocity. They do not now have to meet requirements substantially equal to the requirements of this bill. They need only be 18 years of age, not convicted of a felony, be licensed in another state (any state) and to have practiced in that state for one year AND pass the examination on our Vital Statistics law, the provisions of this chapter and the regulations promulgated by the department under this chapter.....

As you know, 100% of all license presently held in Alaska come either from reciprocity or grandfather rights. Not one person has taken the State examination in obtaining his license here. This is a trend that will not suddenly cease to exist. There will be no, or few, applicants for examination in the coming years. All those seeking licensure here will continue to do so through reciprocity. With a whole in our reciprocity law so large you could drive a truck through it we do a dis-service to the public by allowing it to exist.

We have three alternatives as I see it. 1. Take out the "or". 2. Add under (b) of section 08.42070 the requirement to pass the examination provided by the Conference of Funeral Service Examining Boards of the kUnited States. 3. Require simply that a person desiring licensue hold a "legal license" from another state, and that that license was obtained by examination rather than by a grandfather clause or by reciprocity.

To do anything but one of the above three would be a great injustice to the public.

Sincerely,

Richard D. Rome
Richard D. Rome

cc: Ed Willis & Bob Bradley

File Bob, This really fouls up the whole purpose of the licensing statute - we keep our some status - no standards!